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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 CHARLES WILLIAMS, M.D.,
9 Plaintiff,

2:09-CV-00554-PMP-PAL

10 vs.

ORDER

11 UNIVERSITY MEDICAL CENTER
12 OF SOUTHERN NEVADA, et al.,

13 Defendants.
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15 On February 25, 2010, this Court entered an Order (Doc. #91) granting
16 Defendants' Motion for Summary Judgment regarding Plaintiff's Claims for Punitive
17 Damages (Doc. #68).

18 On March 8, 2010, Plaintiff filed a Motion for Reconsideration of the
19 Court's Order (Doc. #94). Having read and considered Plaintiff's fully briefed
20 Motion, the Court finds that it should be granted in part and denied in part.

21 Plaintiff first argues that the Court's prior Order is not clear as to whether it
22 was finding Defendants Ellerton and Medical Staff state actors or private actors
23 acting under the color of state law. Second Plaintiff argues that it would be unjust
24 not to allow punitive damages against Defendant Ellerton as he was the primary
25 actor against Plaintiff. Third Plaintiff contends some of his claims arise under
26 federal law, and the state statutory privilege does not apply to federal claims.

1 Defendants' respond that Plaintiff should have raised these arguments
2 before, and because he failed to do so, reconsideration is not warranted.
3 Additionally, Defendants argue that the Court's prior Order was clear that
4 Defendants Ellerton and Medical Staff were state actors, thus entitled to the
5 statutory privilege. As to the first and second arguments advanced by Plaintiff, the
6 Court concurs with Defendants and finds that Plaintiff could, and should have raised
7 these arguments in response to Defendants' motion for summary judgment on
8 punitive damages.

9 Additionally, the Court's Order (Doc. #91) was clear that Defendants
10 Ellerton and Medical Staff are state actors when performing acts pursuant to
11 authority delegated by the Board and thus they are entitled to the statutory privilege.
12 There is nothing unjust about not allowing punitive damages against Ellerton when
13 acting in that capacity. The State of Nevada has made the determination as a
14 statutory matter, and this Court has no basis to decide that when a state actor is the
15 "primary violator," it would be unjust for that actor to benefit from the statutory
16 privilege. Hence, Plaintiff's first and second request for reconsideration must be
17 denied.

18 The Court, however, finds that Plaintiff is entitled to reconsideration with
19 respect to his federal claims. In their motion for summary judgment on punitive
20 damages, Defendants requested the Court apply the statutory privilege in NRS §
21 41.035 to the state law tort claims in counts six, seven, eight and nine. This Court's
22 Order (Doc. #91) extended relief beyond that requested by Defendants when it
23 granted the relief on his federal claims. Defendants' response that Plaintiff could
24 have argued this matter in response to the original motion is misguided. Plaintiff had
25 no need to argue the issue previously because Defendants did not contend in their
26 motion that NRS § 41.035 applied to Plaintiff's federal claim.

1 **IT IS THEREFORE ORDERED** that Plaintiff Charles Williams, M.D.'s
2 Motion for Reconsideration of the Court's Order (Doc. #94) is **GRANTED** to the
3 limited extent that this Court's prior Order (Doc. #91) granting Defendants' motion
4 for summary judgment regarding punitive damages is modified to provide that said
5 Order shall not apply with respect to Plaintiff's request for punitive damages on his
6 federal claims.

7 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Reconsideration
8 (Doc. #94) is **DENIED** in all other respects.

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10 DATED: April 22, 2010.

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13 PHILIP M. PRO
14 United States District Judge
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